*** HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

W.P.No.3707 of 2000

% 01-08-2006

P.V.B.Sharma,
S/o.Late P.Vishwanadham,
Aged 57 years
Hyderabad. ..
Petitioner

Vs.

$ 1. Mishra Dhatu Nigam Ltd.,
(A Government of India Undertaking)
Kanchan Bagh, Hyderabad.
rep. by its Chairman-cum-Managing Director
2. A.K.Taneja,
Managing Director,
Mishra Dhatu Nigam Ltd.,
(A Government of India Undertaking)
Kanchan Bagh, Hyderabad
3. The General Manager (R),
Mishra Dhatu Nigam Ltd.,
(A Government of India Undertaking)
Kanchan Bagh, Hyderabad

… Respondents

! Counsel for the Petitioner: Sri Vedula Srinivas
^ Counsel for Respondents : Sri Srinivas Murthy Koka

<Gist :

>Head Note :

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.3707 of 2000

Dated 1st day of August, 2006

Between:

P.V.B.Sharma .. Petitioner

And

Mishra Dhatu Nigam Ltd.,
(A Government of India Undertaking)
Kanchan Bagh, Hyderabad,
rep. by its Chairman-cum-Managing
Director and two others

..
Respondents

HON'BLE SRI JUSTICE GOAPALA KRISHNA TAMADA

W.P.No.3707 of 2000

O R D E R:

The petitioner, who was the Manager (Electrical) in the 1st respondent-Mishra Dhatu Nigam Limited, Kanchan Bagh, Hyderabad, has filed this writ petition seeking a mandamus declaring the proceedings dated 2.2.2000 issued by the 3rd respondent as arbitrary, illegal and unconstitutional and for a consequential direction to the respondents to continue the petitioner in service till he attains the age of superannuation.

The petitioner, after working as an Assistant Engineer in various organizations, such as N.F.C., I.D.P.L., Kirlampudi Sugar Mills Limited, etc., joined the 1st

respondent-organization in the year 1978 as an Assistant Engineer (Electrical) in the Executive cadre and ultimately by the year 2000, he became the Manager (Electrical). As he developed defective eye sight, he voluntarily opted for retirement with effect from 30.06.1999 and accordingly gave an application for his voluntarily retirement on 27.08.1998 and his request was considered by the respondents, vide the acceptance letter dated 21.1.1999. However, as the workload was heavy, the petitioner, for obvious reasons, addressed another letter requesting the management to allow him to continue in service upto 30.11.2000 and retire him on that day as he will be completing 58 years of age. He also addressed a letter dated 20.03.1998 requesting the management to consider the case of his son for appointment on compassionate grounds. However, both his requests were negatived by the management and the 3rd respondents herein issued the proceedings dated 02.02.2000 retiring the petitioner invoking Rule 35(a) of Midhani Conduct Discipline and Appeal Rules (for short "the Rules) applicable to Executives on the ground that he is found to be unfit to continue in service. Against the proceedings, this Writ Petition is filed.

The respondents have filed a detailed counter affidavit stating that it is the prerogative of the management whether to continue a person in service or not till he attains the age of superannuation. It is also

stated that it is for the management to assess the capacity of its employees periodically and as and when the management comes to the conclusion that a particular employee is unfit to be continued in service, it can invoke Rule 35 (a) of the Rules and retire the person before he attains the age of superannuation.

Heard the learned counsel for both the parties.

Learned counsel for the petitioner, Sri Vedula Srinivas, has strenuously contended that the impugned proceedings were issued only with a *mala fide* intention as the 2nd respondent, who is the Chairman-cum-Managing Director of the 1st respondent, has a sadistic temperament of teasing his employees. According to him, the petitioner as well as the 2nd respondent worked in N.F.C. in early 1970s and from the date when he addressed a letter in the year 1998 seeking voluntary retirement on the ground of defective eyesight, the 2nd respondent started teasing the petitioner on some pretext or the other. Subsequently, though the petitioner addressed another letter for continuation of his service, the 2nd respondent has been asking the petitioner to retire voluntarily otherwise he would spoil his career. However, as the petitioner was in a better position, he addressed a letter for continuing him in service till the age of superannuation, but invoking the provisions of Rule 35(a) of the Rules, the impugned proceedings were issued. According to the learned

counsel, in the case of the petitioner, Rule 35 of the Rules has no application as the petitioner himself opted for voluntary retirement. If really he is unfit, nothing can prevent the management to issue the impugned proceedings under Rule 35 of the Rules. It is only after the petitioner opted for voluntary retirement and later intended to withdraw his letter, the impugned proceedings were issued, which clearly indicates that the 1st respondent-organization had no intention to retire the petitioner invoking the provisions of Rule 35(a) of the Rules. The learned counsel has also drawn my attention to various provisions of the Act 1 of 1996 and contended that in a case of this nature the respondents have a duty to accommodate the petitioner by adjusting him in a suitable post or keeping him in a supernumerary post.

Sri Srinivasa Murthy Koka, learned standing counsel appearing for respondents has opposed the submissions stating that it is only after coming to know that the petitioner is unfit the impugned proceedings were issued. According to him, the petitioner was subjected to medical test and a competent Medical Officer of the respondent-organization, vide his proceedings dated 29.06.1998 and 23.10.1998 respectively opined that it is highly risk to continue the petitioner to work with high voltage and electrical equipment at the site because of the danger involved to him. Hence, respondents 1 to 3 have invoked the provisions of Rule 35(a) of the Rules. According to the

learned standing counsel, the provisions of Act 1 of 1996 have no application to the case on hand as it is only after assessing the fitness of the petitioner, the proceedings retiring him compulsorily were issued.

The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the “Meet to Launch the Asian and Pacific Decades of Disabled Persons” was held in Beijing in the first week of December, 1992 by the Asian and Pacific countries to ensure “full participation and equality of people with disabilities in the Asian and Pacific regions”. This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto, invoking the provisions of Article 253 of the Constitution of India which deals with legislation for giving effect to international agreement, an Act called The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 (for brevity “the Act”) was enacted and this Act came into force with effect from 1.1.1996. In fact, the very purpose of promulgating the

Act is to provide some sort of succour to the disabled persons.

According to Section 47 of the Act, which deals with non-discrimination in Government employment, no establishment shall dispense with, or reduce in rank, an employee, who acquires a disability during his services. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits. If it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

From the wording incorporated under this provision of law, it is clear that no person shall get disqualification on the ground of disability and he shall be allowed to continue till he attains the age of superannuation. There is no dispute that the age of superannuation for the employees working in the 1st respondent-organization is 60 years.

Rule-35(a) of the Rules reads as follows:

Every executive shall be required to retire from service on attaining the age of 60 years. The management, may, however, on review, retire any executive after he attains the age of 55 years on three months' notice or payment of three months' pay and allowances in lieu thereof. An Executive may also after attaining the age of 55 years opt to retire voluntarily from the services of the company

on giving three months' notice.

Executives retiring between the age of 55 and 60 years will be eligible for all retirement benefits".

From the above rule, it is clear that the management has reserved a right to compulsorily retire any Executive after he attains the age of 55 years, but the right reserved by the management shall be used exclusively when the executive is found misfit but not on ground of disability he acquired. In the instant case, when the case of the petitioner is looked at in that perspective, it is clear that the management i.e. the 3rd respondent issued the impugned proceedings solely on the ground of disqualification he acquired during the course of his employment. The impugned order reads as follows:

"As per the existing rules of Midhani, your superannuation is due on 30.11.2002. However, the competent authority while reviewing your case on health grounds and other material available on records has found you fit to retire from the service of the Company as per Rule 35(a) of Midhani Conduct, Discipline and Appeal Rules for the Executives in the overall interest of the Organization.

In accordance with the provisions of the said Rules, you are hereby given three months pay and allowances in lieu of three months' notice period and you are hereby retired from the service of the company with immediate effect. Accordingly, a crossed cheque bearing No.009515 dated 2.2.2000 drawn on Andhra Bank, BDL Campus Branch, Hyderabad for Rs.62,499/- (Rupees Sixty Two Thousand Four Hundred and Ninety Nine Only) is enclosed."

From the said proceedings, it can be safely inferred that they are solely on the ground of disability incurred by the petitioner. In fact, the petitioner was subjected to medical test by a competent Medical Officer, who certified that the petitioner is suffering from eye-sight and it may not be safe to continue him in the interest of the organization. That apart, the petitioner had in fact initiated the retirement process on his own. The first letter addressed by him was on 27.8.1998 requesting the management to retire him with effect from 30.6.1999. Subsequently, he addressed another letter to retire him from service with effect from 31.12.1999 instead of 30.6.1999 and the said letter was also accepted on 13.7.1999. Thereafter, the petitioner addressed another letter on 1.1.2000 requesting the management i.e. the 1st respondent to continue him till he attains the age of 58 years i.e. 30.11.2000. However, at that stage, the impugned proceedings were issued on 2.2.2000. In the impugned proceedings also, it is clearly stated that his case was reviewed on health grounds and from this it is obvious that because of the disability incurred by the petitioner, the respondents are compulsorily retiring him from service. As stated above, the respondents have every right to review the cases of its Executives and retire them provided they are found unfit, but this act is subject to the provisions of Act 1 of 1996. If any executive is found misfit or is not up to the mark, maybe it is within the right of the management to

compulsorily retire such an employee but the said option cannot be exercised if he is found misfit on account of disability.

In fact, Section 2(i) of the Act deals with Disability, which means blindness or low vision. Section 2(b) of the Act deals with blindness and according to the provision of law, “blindness” refers to a condition where a person suffers from any of the following conditions, namely:-

i) total absence of sight; or

ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

iii) *limitation of the field of vision subtending an angle of 20 degree or worse.*

When such is the situation of the petitioner, it is clear from the provisions of law that he shall be shifted to some other post with the same pay scale and service benefits and if it is not possible to adjust the petitioner against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation.

No doubt, it is true that there is no *“non-obstante”* clause, but it does not mean that simply because that clause is not in existence, Rule 35(a) of the Rules prevails over Rule 47. In fact, Section 72 of the Act makes the provision of law very clear and according to which the provisions of the Act or the Rules made thereunder shall be in addition to and not in derogation or of any other law for the time being in force or any rules, order or any

instructions issued thereunder, enacted or issued for the benefit of persons with disabilities. Hence, simply because there is no *"non-obstante"* clause in Act 1 of 1996, it cannot be said that Rule 35 of the Rules still can be operated.

As discussed above, Rule 35(a) of the Rules can definitely be pressed into service on some other grounds, but not on the ground of disability.

Hence, this Court has no hesitation to hold that the impugned proceedings dated 2.2.2000 retiring the petitioner compulsorily from services are invalid and hereby set aside.

Accordingly, the writ petition is allowed. No costs.

01.08.2006
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